

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN MICHAEL BALE,

Plaintiff,

v.

RUSSELL D HAUGE,

Defendant.

CASE NO. C14-5572 RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR:  
AUGUST 22, 2014

The District Court has referred this 42 U.S.C. § 1983 civil rights matter to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Rules MJR 1, MJR 3, and MJR 4.

Plaintiff has filed a proposed complaint (Dkt. 1). The Court has reviewed the complaint at the screening stage pursuant to 28 U.S.C. § 1915A. As explained below, the Court recommends dismissing this action for failure to state a claim because defendant Hague has absolute immunity and plaintiff cannot seek release from prison through a civil rights action. This dismissal would count as a strike pursuant to 28 U.S.C. 1915(g).



1 F.2d at 1078. Prosecutorial immunity extends to the process of plea bargaining as an integral  
 2 part of the judicial process. *Miller v. Barilla*, 549 F.2d 648, 649 n. 3 (9th Cir. 1977).

3 Thus, plaintiff's claims against the attorney who represented the state in his criminal  
 4 action fail as a matter of law. The Court recommends dismissing plaintiff's action at the  
 5 screening stage for failure to state a claim.

6 B. Release from prison.

7 Plaintiff seeks release from prison in this action (Dkt. 1). If a plaintiff is challenging the  
 8 very fact or duration of physical imprisonment, and the relief sought will determine whether  
 9 plaintiff is or was entitled to immediate release or a speedier release from that imprisonment,  
 10 plaintiff's sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475,  
 11 500 (1973).

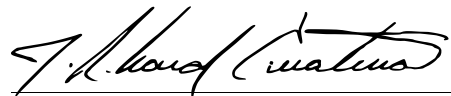
12 The United States Supreme Court held that "[e]ven a prisoner who has fully exhausted  
 13 available state remedies has no cause of action under § 1983 unless and until the conviction or  
 14 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas  
 15 corpus." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). The Court added:

16 Under our analysis the statute of limitations poses no difficulty while the state  
 17 challenges are being pursued, since the § 1983 claim has not yet arisen. . . . [A]  
 18 § 1983 cause of action for damages attributable to an unconstitutional conviction  
 19 or sentence does not accrue until the conviction or sentence has been invalidated.  
 20 *Id.* at 489. "[T]he determination whether a challenge is properly brought under § 1983 must be  
 21 made based upon whether 'the nature of the challenge to the procedures [is] such as necessarily  
 22 to imply the invalidity of the judgment.' *Id.* If the court concludes that the challenge would  
 23 necessarily imply the invalidity of the judgment or continuing confinement, then the challenge  
 24 must be brought as a petition for a writ of habeas corpus, not under § 1983." *Butterfield v. Bail*,  
 120 F.3d 1023, 1024 (9th Cir. 1997) (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)).

1 Plaintiff's action cannot proceed as a civil rights action. The Court recommends  
2 dismissal without prejudice to plaintiff filing a habeas corpus petition.

3 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
4 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
5 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
6 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
7 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
8 August 22, 2014, as noted in the caption.

9 Dated this 29<sup>th</sup> day of July, 2014.

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12 J. Richard Creatura  
13 United States Magistrate Judge  
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